BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

BEVERLY J. TULL	)	
Claimant	)	
VS.	)	
	)	Docket No. 258,286
ATCHISON PRODUCTS, INC.	)	
Respondent	)	
AND	)	
	)	
SUPERIOR NATIONAL INSURANCE GROUP,	)	
RISK ENTERPRISE MANAGEMENT LTD.,	)	
FIREMAN'S FUND INSURANCE COMPANY, and	)	
ST. PAUL FIRE & MARINE INSURANCE CO.	)	
Insurance Carriers	)	

ORDER

Respondent and one of its insurance carriers, Risk Enterprise Management Limited (REM), appeal from a preliminary hearing Order entered by Administrative Law Judge Bryce D. Benedict on November 28, 2000, wherein Judge Benedict ordered medical treatment be provided by respondent and its insurance carrier and further held that:

> In order to determine the rights of the Claimant here the Court is not required to determine which carrier is liable for payment of medical expenses; they are jointly and severally liable for purposes of this Order. Brian K. Fugate vs. Stardust Feed, Appeals Board docket No. 214,259 (Dec. 1998); American States Insurance Company v. Hanover Insurance Company, 14 Kan. App. 2d 492 (1990).

ISSUES

Claimant alleges she developed bilateral upper extremity injuries from a series of accidents during her employment with respondent. The issue on appeal is the date of accident or, stated another way, whether claimant's current need for medical treatment is due to injuries claimant suffered while working for respondent during REM's period of coverage or whether, instead, claimant thereafter continued to suffer repetitive trauma injuries and, therefore, whether the date of accident was during the period that respondent's insurance coverage was with a subsequent insurance carrier. All of the alleged dates of accident in the series occurred while claimant was working for respondent. The compensability of claimant's injury is not disputed. What is disputed is which

insurance carrier or carriers should be responsible for paying the cost of claimant's medical treatment.

Claimant argues, inter alia, that this appeal fails to raise an issue which the Board has jurisdiction to review on an appeal from a preliminary hearing order and should, therefore, be dismissed.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the arguments, the Board concludes that the issues raised on appeal are not jurisdictional issues. As a consequence, the Board does not have jurisdiction to review those issues at this stage of the proceedings.

Claimant's Memorandum summarizes the case as follows:

> Claimant has been an employee of Atchison Products since 1994 and noticed the onset of bilateral carpal tunnel syndrome commencing in August or September 1999. Upon reporting her difficulties to Atchison Products, Atchison Products directly referred her to Dr. Shriwise who provided conservative treatment. On June 14, 2000, Dr. Shriwise wrote to Atchison Products indicating he believed surgery was necessary for the claimant. When treatment was not forthcoming, claimant filed her application for hearing on the 28th day of September 2000 and her application for preliminary hearing August 18, 2000 seeking surgery for her wrists. A preliminary hearing was scheduled on the 22nd day of November 2000.
>
> It is important to understand that respondent had insurance coverage as follows:
>
> | | |
> |---|---|
> | November 7, 1998 to November 7, 1999 | Fireman's Fund |
> | November 7, 1999 to November 7, 2000 | Superior/REM |
> | November 7, 2000 to November 7, 2001 | St. Paul |
>
> Superior has filed for bankruptcy protection and the parties have been advised REM is handling the claim for Superior.
>
> REM has submitted its memorandum suggesting that another carrier, namely St. Paul, should be responsible for care and treatment since the preliminary hearing was not held until November 22, 2000. There is no question claimant continued to be employed by Atchison Products and that she believes her condition worsened after the date Dr. Shriwise recommended surgery.

> The question the Board must address is whether or not an abusive practice such as that employed by Superior, the predecessor to REM, should abrogate its duty as of June 2000 to provide medical treatment and temporary total disability benefits. In other words, once the authorized treating physician recommended surgery, the claimant could not obtain authority for the surgery because Superior refused to authorize that care and treatment. Essentially, the dispute was between Fireman's Fund, who was on the risk until approximately November 7, 1999 and Superior who accepted coverage from November 7, 1999 to November 7, 2000. REM now suggests that Superior's refusal to provide treatment should alleviate its duties under the Kansas Workers' Compensation Act.

On an appeal from a preliminary hearing order, the Board is limited to review of allegations that the ALJ exceeded his/her jurisdiction. K.S.A. 44-551. This includes review of issues identified in K.S.A. 44-534a as jurisdictional issues. On the current appeal, there is no dispute that claimant's current need for medical treatment and temporary total disability compensation is the result of an injury that arose out of and in the course of her employment with respondent. The only question is the date or dates of accident and, as a result, which insurance carrier is liable for benefits. REM contends the ALJ erred by not finding a single date of accident. This contention does not raise one of the issues identified in K.S.A. 44-534a and does not otherwise constitute an allegation that the ALJ exceeded his jurisdiction. *See* Carpenter v. National Filter Service, 26 Kan. App. 2d 672, 994 P.2d 641 (1999).

REM also alleges that the ALJ exceeded his jurisdiction by holding the insurance carriers jointly and severally liable for claimant's preliminary benefits. The Board disagrees. The ALJ has jurisdiction over the respondent and, therefore, over its insurance carriers. *See* K.S.A. 40-2212; Landes v. Smith, 189 Kan. 229, 368 P.2d 302 (1962). Furthermore, K.S.A. 44-534a grants an ALJ the authority to award medical and temporary total disability compensation at a preliminary hearing after "a preliminary finding that the injury to the employee is compensable."

The Board was presented with a similar issue in the case of Ireland v. Ireland Court Reporting, WCAB Docket Nos. 176,444 & 234,974 (Feb. 1999), where, in holding that the Board was without jurisdiction to consider the issue of which insurance carrier should pay for the preliminary hearing benefits, we said:

> Furthermore, it is inconsistent with the intent of the Workers Compensation Act for a respondent to delay preliminary hearing benefits to an injured employee while its insurance carriers litigate their respective liability. The employee is not concerned with questions concerning this responsibility for payment once the respondent's general liability under the Act has been acknowledged or established. Kuhn v. Grant County, 201 Kan. 163, 439

P.2d 155 (1968); Hobelman v. Krebs Construction Co., 188 Kan. 825, 366 P.2d 270 (1961).

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the appeal of the preliminary hearing Order entered by Administrative Law Judge Bryce D. Benedict on November 28, 2000, should be, and the same is hereby, dismissed.

IT IS SO ORDERED.

Dated this ____ day of April 2001.

BOARD MEMBER

c: Dennis L. Horner, Kansas City, KS
Joseph C. McMillan, Kansas City, MO
John R. Emerson, Kansas City, KS
Patricia A. Wohlford, Overland Park, KS
Bryce D. Benedict, Administrative Law Judge
Philip S. Harness, Director